BOD/2011/05—DOC 13

Meeting of the EFA FTI Board of Directors

Kigali, Rwanda, 18-19 May 2011

PROTOCOL REGARDING MISUSE OF EDUCATION FOR ALL FAST TRACK INITIATIVE FUNDS

For Decision

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1. Purpose

The purpose of this paper is to seek the approval of the EFA FTI Board of Directors of the Protocol on Regarding Misuse of Education for All Fast Track Initiative Funds, attached as Annex 1 to this document.

2. Background

This paper and the attached Protocol are written in response to the request of EFA FTI Board members for a protocol on communication regarding fraud and corruption. The proposed Protocol uses the term "misuse" to cover fraudulent and corrupt practices, as defined in the Protocol.

3. Decision Requested

The Board of Directors is requested to approve the following decision:

> **BOD/2011/05-XX – Protocol on Misuse of EFA FTI Funds:** The EFA FTI Board of Directors approves the Protocol on Misuse of Education for All Fast Track Initiative Funds, attached as Annex 1 to BOD/2011/05—DOC 13.

4. Reasons for Recommendation

4.1 Importance of the Issue

The Protocol on Misuse of EFA FTI Funds is being developed at a time when the EFA FTI Board of Directors has been reorganized on a constituency basis and has been provided with the authority to make allocation decisions regarding the Education for All Fund as well as the predecessor EFA FTI trust

funds.[1] It also comes at a time of increased awareness and concern about fraud and corruption at the country level, due to the findings of fraudulent activities in EFA FTI-supported programs in certain countries. To date, communications from the EFA FTI Secretariat to the Catalytic Fund Committee and the EFA FTI Board of Directors about fraud and corruption involving EFA FTI Funds has occurred without a guiding framework. The proposed Protocol puts in place a framework to improve the lines of communication.

4.2 A Shared Responsibility with No Additional or Duplicative Requirements

4.2.1 In reviewing the proposed Protocol, it is important that EFA FTI Board members keep in mind the operating model of the EFA FTI. The EFA FTI operates as a partnership, with each partner having a role to play in protecting both domestic and donor funds contributed to the education sector in the EFA FTI's developing country partners. Fraud and corruption in the education sector should not be tolerated by any member of the EFA FTI Partnership.

4.2.2 It is also recognized that certain EFA FTI Partners play particular fiduciary roles with respect to EFA FTI trust funds. The EFA FTI Board of Directors allocates to the EFA FTI developing country partners funds for country-level activities through grants supervised or implemented by the EFA FTI's multilateral and/or bilateral partners. These partners use their own policies, procedures and rules to detect, manage and sanction fraud and corruption in relation to all funds entrusted to them, including the EFA FTI trust funds. Many of these policies are familiar to donors as contributors to multilateral agencies and/or participants in delegated cooperation schemes such as the "Nordic Plus" arrangements.[2] In addition, the Integrity Vice Presidency of the World Bank Group (INT), which handles investigations of fraud and corruption involving World Bank projects, has entered into memoranda of understanding with many of the donors and one of the developing country partners currently represented on the EFA FTI Board of Directors to be able to share information and collaborate on investigations.[3] More information on the

[1] The Committees of the Catalytic Fund and the Education Program Development Fund have approved the transfer of their decision-making authority over those trust funds to the EFA FTI Board of Directors.

[2] http://www.norad.no/en/Tools+and+publications/Publications/Publication+Page?key=109585

[3] Currently, the World Bank's INT has memoranda of understanding with the Independent Authority Against Corruption of Mongolia. It also has MoUs with AusAID, the European Against Corruption Network, the International Criminal Police Organization (INTERPOL), the European Anti-Fraud Office (OLAF), the Serious Fraud Office (UK), the Office of the Special Inspector General for Afghanistan Reconstruction, and the Office of the General Counsel of USAID.

policies of the World Bank (and, if available, other potential Supervising Entities (SEs) and Implementers) on fraud and corruption will be provided at the meeting of the EFA FTI Board of Directors in Kigali. The use of these arrangements is consistent with the EFA FTI compact to harmonize procedures among donors.

4.2.3 Given the EFA FTI's reliance on its partners, it is important to enable robust lines of communication to the EFA FTI Board of Directors (through the EFA FTI Secretariat) from all of the EFA FTI's partners – those acting on the ground through Local Education Groups, and in particular those agencies acting as Coordinating Agencies, SEs and Implementers – and from donor and others' headquarters. The EFA FTI Board of Directors need to be informed about issues relating to misuse of funds in particular as these issues can have a significant impact on the reputation of the EFA FTI and its partners.

4.3 Concerns of Confidentiality

While it is recognized that communication with the EFA FTI Board of Directors on misuse of EFA FTI funds is crucial, it must also be balanced against the need for confidentiality and other obligations of the EFA FTI Partners in certain situations. The EFA FTI Partners who act as SEs, Implementers, Coordinating Agencies and other participants in Local Education Groups, and even donors in their headquarters capacities, may be limited in the timing and content of information that they may share related to these areas, in order to protect the integrity of investigations and other actions taken in relation to suspected and/or substantiated misuse. These limitations should be respected. Additional requirements imposed by the EFA FTI may prevent multilateral and bilateral partners from taking on the role of SE or Implementer since these might put them in conflict with their own policies and procedures. In addition, there are instances where the EFA FTI Secretariat may obtain information relating to misuse that would not be appropriate to share with the EFA FTI Board of Directors as a whole. Some of the considerations that should be taken into account include those listed in the Protocol in paragraph 6b, including legal risks and risks of reputation damage. It is noted that communications with the EFA FTI Board of Directors borders on making a public statement, as Board Members and Alternate Board Members are expected to share information received from the EFA FTI Secretariat with their constituencies, which in many cases are broadly based.

4.4 Protocol Requirements and Communications Procedures

The proposed Protocol sets out that the obligation for monitoring the use of funds in the education sector in EFA FTI developing country partners is a shared responsibility amongst all EFA FTI Partners. However, it also sets out some basic requirements for SEs, Implementers and others with regard to their current policy framework for investigating and reporting on misuse of funds to provide for a communication channel to the EFA FTI Board of Directors (through the EFA FTI Secretariat) on misuse. The Protocol then sets out the procedures used by the EFA FTI Secretariat to communicate with the EFA FTI Board of Directors. It is proposed that when communications regarding misuse of EFA FTI funds are delivered to the EFA FTI Secretariat, that, if permitted by the World Bank's disclosure regime,[4] the information is shared by the Head of the EFA FTI Secretariat with the Chair of the EFA FTI Board of Directors to determine the timing and content of any communication that should be made to the EFA FTI Board of Directors. The Head of the EFA FTI Secretariat and the Chair of the EFA FTI Board of Directors will also decide whether public disclosure should be made, including a press release and information on the EFA FTI website. In some cases, Board Members may be asked to keep the information confidential to protect the integrity of the investigation and to protect the reputation of the EFA FTI and its partners, as well as other reasons listed in the Protocol (see paragraph 6b). In addition, the EFA FTI Secretariat will prepare an annual report on lessons learned from any findings of fraud and corruption over the previous year, if any.

5. Next Steps

Once the Protocol is approved by the EFA FTI Board of Directors, the Protocol will be posted on the EFA FTI website and will be implemented in accordance with its terms. The EFA FTI Secretariat will also send a copy to the entire EFA FTI Partnership to ensure that it is widely disseminated.

[4] The Head of the EFA FTI Secretariat is a staff member of the World Bank and therefore bound by the World Bank's disclosure regime in relation to information he or she may receive in relation to misuse of funds in programs supervised by the World Bank. The World Bank rules require staff members to report information on misuse to the World Bank's Vice Presidency of Integrity who decides whether an investigation is warranted and on the content of information released to the affected country, the donors and other affected parties.

6. Costs of Initiative and Source of Funding

The EFA FTI Secretariat anticipates that implementation of the proposed Protocol can be absorbed into the current work programs of the EFA FTI Secretariat and the Chair of the EFA FTI Board of Directors without additional cost. It should be noted that the EFA FTI relies on the fiduciary and monitoring role of the Supervising Entities and Implementers, who are provided with fees to supervise the programs while they are being implemented.

7. Contact

Board members and others with questions on these matters are invited to contact the Finance, Administration and Board Services Team Coordinator, Nancy Pinto, at: npinto@educationfasttrack.org.

ANNEX 1: PROTOCOL REGARDING MISUSE OF EDUCATION FOR ALL FAST TRACK INITIATIVE FUNDS

1. **Definitions.** In this document:

   a. "EFA FTI Funds" means all funds transferred to a Supervising Entity or Implementer from the Education for All Fund, the Catalytic Fund and the Education Program Development Fund.
   b. "Implementer" has the same definition as in the Education for All Governance Document adopted by the EFA FTI Board of Directors.
   c. "Local Education Group" (LEG) has the same definition as in the Education for All Governance Document adopted by the EFA FTI Board of Directors.
   d. "Misuse" means any fraudulent and corrupt practices including the solicitation, payment or receipt of bribes, gratuities or kickbacks, or the manipulation of contracts through any kind of misrepresentation.
   e. "Supervising Entity" has the same definition as in the Education for All Fund Governance Document adopted by the EFA FTI Board of Directors.

2. **Principle and Objective.** The Education for All Fast Track Initiative ("EFA FTI") and its partners do not tolerate any Misuse of funds for the use of education programs in its developing country partners. Fraud and corruption are one of the major causes of poverty and constitute a barrier to reaching the Millennium Development Goals. Early detection of, and accountability and transparency with regard to Misuse of all funds in the education sector:

   a. Prevents and deters future incidents of Misuse of funds in the education sector.

   b. Contributes to knowledge and understanding of the nature of fraudulent and corrupt activities and builds institutional capacity within governments to strengthen internal systems for detection and accountability for all public funds.

   c. Builds donor confidence in the EFA FTI and its partners and therefore contributes to resource mobilization for the education sector.

   d. Increases the efficiency and effectiveness in the use of EFA FTI Funds in order to deliver maximum results in the work of the EFA FTI to reach the Education for All goals.

   The ultimate victims of any Misuse of funds in the education sector are the intended beneficiaries of the EFA FTI Funds, the citizens in developing countries who stand to benefit from improvement of education programs in their countries.

3. **Shared Responsibility of all EFA FTI Partners.** The EFA FTI is a global partnership of developing country partners, donor countries, civil society organizations, the private sector and foundations

and multilateral agencies. It is recognized that each of the EFA FTI Partners has a role to play in preventing the Misuse of funds in the education sector of its developing country partners. In particular:

a. Developing country partner governments, civil society organizations and private organizations implementing education sector programs in developing countries have an obligation to establish robust financial management and procurement systems that seek to prevent, detect and sanction Misuse in the education sector, including EFA FTI Funds.

b. Members of Local Education Groups (developing country partner governments, local donors, civil society organizations, multilateral agencies and, in some cases, the private sector and private foundations) and their agency headquarters should share information, where appropriate, regarding possible Misuse in executing their role of monitoring education sector programs. The LEG, acting through the Coordinating Agency, should provide information, whenever possible on suspicion and/or evidence of Misuse of funds in the education sector, and with regard to EFA FTI Funds in particular, to the EFA FTI Board of Directors through the EFA FTI Secretariat, including steps taken to address the Misuse.

c. Multilateral and bilateral agencies acting as Supervising Entities and Implementers have an obligation to: i) supervise/oversee EFA FTI Funds using their own policies, procedures and rules; ii) report to the EFA FTI Board of Directors through the EFA FTI Secretariat on Misuse involving EFA FTI Funds to the extent permitted in their internal policies and procedures; and iii) use their best efforts to recover and reimburse to the appropriate EFA FTI trust fund any funds that have been misappropriated due to Misuse. In cases where multilateral and bilateral agencies are also contributing their own funds in the education sector, such agencies should share as much information with the EFA FTI Board of Directors as is permissible under their agency rules, regarding suspicion and/or evidence of Misuse in the sector as a whole.

d. The EFA FTI Secretariat, as facilitators for the EFA FTI Partnership, acts as the focal point for communications relating to the suspicion and or evidence of Misuse of EFA FTI Funds.

4. **No Additional or Duplicative Processes.** As a partnership working towards aid and development effectiveness, and desiring to avoid imposing additional or parallel reporting and fiduciary obligations on its partners implementing education programs in developing countries, the EFA FTI does not have its own policies and procedures in relation to the detection, investigation or sanctioning of Misuse of EFA FTI Funds. Rather, it relies on the robust policies, procedures and systems of its multilateral and bilateral partners who act as Supervising Entities and Implementers of allocations from EFA FTI trust funds. The EFA FTI also expects the LEG and others to provide information to the EFA FTI Board of Directors through the EFA FTI Secretariat on any suspicion of or actions taken in relation to Misuse in the education sector. As a consequence, the EFA FTI Board of Directors directs all Supervising Entities, Implementers and Coordinating Agencies and others to report to the EFA FTI Board of Directors information

relating to the suspicion or evidence of Misuse of funds in the education sector, and in particular EFA FTI Funds, including any actions taken to address the Misuse, using the procedures described in paragraph 6 below.

5. **Requirements.** The following requirements and procedures shall be used by the EFA FTI in relation to the suspicion of or actual Misuse of EFA FTI Funds:

   a. The International Bank for Reconstruction and Development, in its capacity as Trustee for the EFA FTI trust funds, shall include in the transfer agreements or other documents transferring funds to Supervising Entities or Implementers an obligation for the SE or Implementer to use their frameworks to manage Misuse in relation to EFA FTI Funds.

   b. Supervising Entities shall include in their grant agreements with developing country partners provisions to ensure prompt communication from the grantee to the Supervising Entity of any suspected Misuse of EFA FTI Funds.

   c. Supervising Entities, Implementers and other EFA FTI Partners shall ensure that they maintain policies to protect whistle-blowers providing information in relation to Misuse of EFA FTI Funds.

6. **Communications to the EFA FTI Board of Directors**

   a. EFA FTI Partners, in particular Supervising Entities, Implementers and Coordinating Agencies and donor or multilateral agency headquarters, having information relating to the suspicion or evidence of the Misuse of funds supporting the education sector and EFA FTI Funds in particular shall inform the Head of the EFA FTI Secretariat at their earliest possible opportunity, having regard to such partners' internal rules and procedures. The EFA FTI recognizes that its partners' disclosure regimes regarding Misuse are designed in part to protect the integrity of investigations of Misuse.

   b. Upon receipt of information relating to the suspicion or evidence of Misuse of EFA FTI Funds, the Head of the EFA FTI Secretariat shall inform the appropriate authorities within the organization that hosts the EFA FTI Secretariat and, if permitted under the disclosure regime of the organization, advise the Chair of the EFA FTI Board of Directors of the content of the information. The Head of the EFA FTI Secretariat and the Chair of the EFA FTI Board of Directors shall consider whether the information received should be communicated to the EFA FTI Board of Directors and/or the EFA FTI Partnership taking into account the need for transparency and accountability in the use of EFA FTI Funds and the need to ensure that the general public is aware that the EFA FTI does not tolerate Misuse of EFA FTI Funds and will act upon information that Misuse has or will occur, balanced against other considerations, including the following:

      i. Protection of the reputation of the EFA FTI, as publicity of Misuse could make it appear that the EFA FTI or its partners have acted negligently in its duties to supervise the use of EFA FTI Funds.

ii. The need to maintain donor confidence in the EFA FTI and its partners.

iii. A request from the Supervising Entity to keep the information confidential to protect any ongoing investigation of those involved in the potential Misuse.

iv. The potential for compromising any legal or other action taken by the national authorities of the country involved.

v. The risk to personal safety of those undertaking the investigation.

vi. The protection of whistleblowers.

vii. The potential for conflicts of interest of EFA FTI Board members.

viii. The potential for legal and other action (defamation, etc.) due to the release of detailed and possibly unsubstantiated allegations against those potentially involved in the Misuse.

ix. The constituency basis of the EFA FTI Board of Directors requires Board Members and Alternate Board Members to share information received from the EFA FTI Secretariat with their constituency members, leading to any communication from the EFA FTI Secretariat bordering on having the status of a public statement.

c. If, after taking into consideration all of the factors listed in the paragraph above, the Chair of the EFA FTI Board of Directors and the Head of the EFA FTI Secretariat agree to deliver a communication to the EFA FTI Board of Directors regarding the suspicion or evidence of Misuse of EFA FTI Funds, they shall send a joint communication by email to the EFA FTI Board of Directors list. They may choose to do so with a proviso requesting all EFA FTI Board members to keep the information in confidence and not to share the information with its constituency members.

d. Any further communications on any particular matter shall be subject to the same process as laid out in this paragraph.

7. **Public Disclosure.** Where appropriate, the Head of the EFA FTI Secretariat and the Chair of the EFA FTI Board of Directors may decide to issue a public statement about Misuse of EFA FTI Funds, including through a press release and/or a posting on the EFA FTI website. Except under exceptional circumstances, it is expected that no public disclosure will be made by the EFA FTI Secretariat or by the Local Education Group, the SE or Implementer, or other EFA FTI Partner without first providing such information to the EFA FTI Board of Directors and advising the EFA FTI Board of Directors that a public statement will be made.

8. **Lessons Learned.** On an annual basis, starting with the first meeting of the EFA FTI Board of Directors of 2012, the EFA FTI Secretariat shall prepare a paper for consideration by the EFA FTI

Board of Directors of the lessons learned from the findings of Misuse of EFA FTI Funds, if any, over the previous year.